IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3699 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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MUKESHKUMAR JIVRAJ RATHOD

Versus

THE COLLECTOR

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Appearance:

MR SHIRISH JOSHI for the Petitioner.

Mr.M.K. Dagli, Assistant GOVERNMENT PLEADER,

for Respondent No. 1-2

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CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 17/09/2002

ORAL JUDGEMENT

Rule. With the consent of both the parties, the matter is taken up for final hearing today.

The petitioner has challenged the order of the Collector, by which the Collector has fixed the rate of Rs.300/- per sq. metre for the period starting from

29.12.1999. The said order of the Collector dated 27.3.2000 is impugned in this petition. The petitioner is given a lease of land of a petroleum pump. The said lease is renewed for a further period of 7 years by an order dated 28.12.1999. The said order of renewal of lease dated 28.12.1999, is at page 25. For a period between 2.2.1994 and 28.12.1999, the petitioner was asked to pay the amount at the rate of Rs.36/- per sq. metre. Thereafter, for the subsequent period, the Collector has determined the valuation and the price is fixed at Rs.300/- per sq. metre, which is required to be paid by the petitioner with effect from 29.12.1999. Mr.Joshi submitted that if appropriate opportunity was given to the petitioner, he could have satisfied the Authority about the correct valuation. It is not in dispute that the order in question is passed without hearing the petitioner.

Mr.Dagli, learned AGP, however, submitted that the impugned order is passed on the basis of the valuation report and by considering the valuation report, it is found that the value of nearby land is Rs.312.95 per sq. metre. He has accordingly justified the valuation fixed by the Collector. However, in my view, the petitioner was required to be given an opportunity before fixing the aforesaid price. Since the order is passed without hearing the petitioner, the mater is sent back to the Collector for passing fresh order, which may be passed after hearing the present petitioner. The petitioner is also permitted to produce appropriate evidence before the Collector. After hearing the petitioner, the Collector may fix appropriate price as deemed fit by him.

It is clarified that this Court has not expressed any opinion on the merits of the issue, as it is for the Collector to fix the same. The matter is sent back to the Collector since the petitioner was not heard before passing the order. Till the Collector arrives at a fresh decision in the matter of fixation of the price, the petitioner shall continue to pay the amount, which he was paying earlier, i.e. at the rate of Rs.36/- per sq. metre. Subsequently, if any order is passed by the Collector, and on the basis of such order, any difference is required to be paid by the petitioner on the basis of such fixation, the same shall be complied with by the petitioner by making good such difference within a period of four weeks from the date of the order, subject to his right to challenge the said order in accordance with law. The Collector may take appropriate decision expeditiously so that there may not be any further delay in finalizing

this issue of fixation of price and such decision may be taken, preferably by 31st December, 2002.

This petition is partly allowed to the aforesaid extent. Rule is made absolute accordingly, with no order as to costs.

17th September, 2002 ( P.B. Majmudar, J. )

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(apj)